*THE HONOURABLE SRI JUSTICE V.V.S.RAO

+WRIT PETITION Nos.8720 and 9071 of 2004

%30-11-2004

W.P.8720 of 2004

-

Sri G.Dinesh Kumar and others

..PETITIONERS

Vs.

$ The Vice Chancellor, Jawaharlal Nehru Technological University, Kukatpally, Hyderabad and another.

..RESPONDENTS

W.P.No.9071 of 2004

A.Vinay Kumar

…PETITIONER

Vs.

The Vice Chancellor, Jawaharlal Nehru Technological University, Kukatpally,

Hyderabad and another.

…RESPONDENTS

Counsel for both the writ petitions

! COUNSEL FOR PETITIONERS: Mr. M.Govind Reddy

^ COUNSEL FOR RESPONDENT No.1: M/s C.Kodanda Ram

COUNSEL FOR RESPONDENT No.2: Mr. S.Niranjan Reddy

<GIST

>HEAD NOTE:

?CASES REFERRED:

1. AIR 1962 SC 316
2. AIR 1967 SC 1373
3. AIR 1978 SC 597
4. AIR 1981 SC 487
5. AIR 1964 SC 464
6. AIR 1984 SC 541
7. 1977 Appeal Cases 1014
8. 408 US 104 (1972)
9. AIR 1962 SC 110
10. AIR 1070 SC 1039
11. AIR 1989 Bombay 162
12. (2002) 9 SCC 720
13. 2000 (4) ALD 630 (DB)
14. 2002 (3) ALD 667 (DB)
15. 2003 (4) ALD 553 (DB)
16. AIR 1971 SC 771 (para 5)
17. AIR 1985 SC 660
18. AIR 1988 SC 2027
19. AIR 1971 SC 2560

20. (1953) 98 L Ed.884

21. AIR 1993 SC 2178

22. AIR 1992 SC 1858 = (1992) 3 SCC 666 = 1992 AIR SCW 2100

23. (2002) 8 SCC 481

24. (1989) 4 SCC 155

25. AIR 1970 SC 129

26. AIR 1952 SC 196

27. (1998) 8 SCC 227

28. AIR 1964 SC 416

29. AIR 1960 SC 1080

30. AIR 1963 SC 812

31. AIR 1965 SC 491

32. AIR 1985 SC 1543

33. AIR 1980 SC 2141

34. (1986) 4 SCC 160

35. (1990) II An.W.R. 270

36. (1998) 6 SCC 215 (para 7)

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE THIRTIETH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

-

WRIT PETITION NO : 8720 of 2004

Between:

1 G.Dinesh Kumar S/o G.Shanti Kumar
3-6-118/48, Hyderguda, Hyd. Roll No.: 0261A0415-EC
Attendance Percentage 64.
2 S.Shravan Kumar S/o S.Parvatha Reddy
4-47, New Nagole, Hyderabad. Roll No.: 02621A1235-CSIT
Attendance Percentage 59.
3 M.Gopi S/o M.V.Suryanarayana Reddy
1-7-21/8, JS. Nagar, Street No. 8, Habsiguda, Hyd.
Roll No:02621A1210-CSIT, Attendance Percentage 64.
4 D.Kiran Kumar S/o D.Chilkaiah
10-84,PVN Colony, Malkajgiri, Secunderabad Roll No.: 02621A0419-ECE
Attendance Percentage 63.
5 G.Manohar S/o G.Venkat Narayana,
38-29/73/1, Shiva Nagar Colony, Sainikpur, Secunderabad-94.
Roll No.: 02621A0516-CSE, Attendance Percentage 64.
6 M.Sudhir Babu S/o.M.V.Prasadh Rao,
Flat No.10 , Narayana Apartment , Safilguda station Road, Safilguda,

Hyderabad-47.
Roll No.01621-A0548-CSE Attendance percentage 63.
7 J.Vijay Kumar s/o J.Srinivas
1-76, Malkajgiri, Santoshnagar colony, Hyderabad-47.
Roll No.: 02621A0554-CSE, Attendance Percentage 56.
8 G.Henry Williams S/o G.Satyanandam
6-1-724/1, Khairatabad, hyderabad-04.
Roll No.: 02621A1009-EIE, Attendance Percentage 62.
9 R.Dasarath Naik S/o R.Ramulu Naik
29-1385/1, East Kaktiya nagar, Neredmet, Sainikpuri, Secunderabad-56.
Roll No.:02621A1207-CSIT Attendance Percentage-62.

10 P.Jagadishwar S/o P.Veeraiah
25-11-37, Bapuji Nagar, Kazipet 506 003, Warangal Dist.
Roll No.: 02625A0202-EEE, Attendance Percentage 64.5.
11 Y.S.Ramakanth S/o Y.M.Suryankanth,
24-88/9,Anand-baug, Safilguda Secunderabad-47.
Roll No.: 02621A0531-CSE, Attendance Percentage 59.
12 Harikrishna Peddasetty Reddy S/o Anjappa P.Reddy
6-6-440/4, Gandhinagar, Secunderabad.
Roll No.: 02621A0511, Attendance Percentage 57.
13 Swarup Vallabh S/o Prasad Rao,

B.Tech., student, R/o Gandhi Nagar, Hyderabad.

..... PETITIONERS

AND

1 The Vice Chancellor, Jawaharlal Nehru Technological University, Kukatpally, Hyderabad.
2 The Secretary, Aurora's Engineering College, Bhongir, Nalgonda Dist.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the regulation 6 of the JNTU academic regulations as arbitrary, unconstitutional, illegal, null & Void, in the interest of justice.

Counsel for the Petitioners: MR.M.GOVIND REDDY

Counsel for the Respondent No.1 : M/S C.KODANDA RAM

Counsel for Respondent No.2: MR.S.NIRANJAN REDDY

WRIT PETITION NO.9071 OF 2004

Between:

A.Vinay Kumar, S/o A.Rajaiah,
R/o Ramakrishnapuram, Mandamarri Mandal, Adilabad District.
Roll No.03621A0256 Attendance Percentage 61

..... PETITIONER

AND

1 The Vice Chancellor, Jawaharlal Nehru Technological University, Kukatpally, Hyderabad.
2 The Secretary, Aurora's Engineering College, Bhongir, Nalgonda

District.

....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a direction or Order or Writ, more particularly one in the nature of Writ of Mandamus declaring the regulation 6 of the JNTU academic regulations as arbitrary, unconstitutional, illegal, null & void, in the interest of justice.

Counsel for the Petitioner: MR.M.GOVIND REDDY

Counsel for the Respondent No.1 : M/S C.KODANDA RAM

Counsel for Respondent No.2: MR.S.NIRANJAN REDDY

The Court made the following :

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.8720 and 9071 of 2004

-

ORDER:

-

The petitioners in both these writ petitions are students of four-year B.Tech., course in Aurora Engineering College, Bhongir, Nalgonda District, the second respondent herein. They allege that they have been regularly attending the classes during the academic year 2002-03 including the guest lectures and seminars conducted by the college. Though they were promised by the management of second respondent that attendance at guest lectures and seminars would also be reckoned for the purpose of calculating attendance as per B.Tech., course regulations, they were not given the benefit. Further, during the annual day function, the students were given five days preparation time but the same was not counted for the purpose of attendance and as and when the students did not adhere to dress code, absent was marked, as a result of all this, on the eve of annual/semester examinations on 30.04.2004, the petitioners were not issued hall tickets on the ground that they do not have the required attendance as per B.Tech., course regulations. Therefore, they filed writ petitions challenging regulation 6 of B.Tech., Four Year Degree Course (Revised) Academic Regulations made by the first respondent (hereafter called, J.N.T.U), which prescribes minimum attendance for appearing in final examinations.

In the affidavit filed along with the writ petitions, the petitioners did not raise any grounds in support of their prayer. When this was pointed out, the petitioners in W.P.No.8720 of 2004 filed another affidavit before this Court on 12.09.2004. In this affidavit, the petitioners state that the relationship between the student and J.N.T.U. is partly governed by contract and partly by principles of public law. The students have not signed any document accepting the regulations and therefore they do not form part of the contract. The students, however, had knowledge of the attendance rule and attended classes in order to fulfil the said criteria, to get qualified for the examinations as well as internal assessment of twenty marks. The petitioners were also given to understand that even if they fall short of attendance, the same would be condoned on such students paying nominal fee. It is further stated that it would be a fallacy to suggest that those students with full attendance are better placed than those students who do not have a required attendance. They contend that in countries like United Kingdom, there is no compulsory attendance and it is left to the choice of the student, whether to attend classes or not. A student who joins the course continues to gain experience and also can learn without attending the classes and therefore there is no logic in prescribing 75/65 per cent of attendance as minimum requirement to make a student eligible to appear in the University examinations. The University has no such power to make the regulations under the provisions of Jawaharlal Nehru Technological University Act, 1972 (for short, the Act) and any rules made thereunder. The regulation 6, which deals with attendance, infringes the fundamental rights of the petitioners under Articles 19, 21 and 41 of the Constitution of India, that regulation 6 is not clear and therefore it violates Article 14 of the Constitution of India besides being *ultra vires.*

The Registrar of J.N.T.U. filed counter affidavit denying petition averments. It is stated that the second respondent detained the petitioners in the semester, in which they were studying, as they did not secure minimum percentage of attendance as per academic regulations of J.N.T.U. The petitioners have not attended classes regularly. As per regulation 6 of J.N.T.U. regulations, one should put in 75 per cent

of the attendance, however, subject to condonation of attendance up to 10 per cent in each semester or year. The petitioners were not having minimum attendance in second year B.Tech., second semester and therefore they were detained and they were not permitted for second year second semester. While denying all other allegations, the first respondent also has given attendance of each of the petitioners during the second semester of second year course.

The second respondent filed counter affidavit opposing the Writ Petitions. While denying various allegations made in the petitioners' affidavit, second respondent states that the students have not been marked absent for frivolous reasons including for not following the dress code etc. He further states that the attendance details are sent every month to each of the student's residences. The students and their parents are therefore fully apprised of the progressive attendance put in by the students.

The learned counsel for the petitioners, Sri M.Govinda Reddy, submits that regulation 6 infringes the fundamental rights of the petitioners under Articles 19, 21 and 41 of the Constitution of India denying liberty to the petitioners to write the examinations. The impugned regulation imposed unreasonable restrictions on the right of the students and therefore, it should be declared unreasonable and violative of fundamental rights. In support of this submission, the learned counsel places reliance on the decision of the Supreme Court in **Collector of Customs, Madras v. Nathella Sampathu Chetty, Maneklal Chhotalal v. M. G. Makwana, Maneka Gandhi v. Union of India** and **Ajay Hasia v. Khalid Mujib Sehravardi.**

Learned counsel nextly contends that regulation 6 is *ultra vires* and J.N.T.U. has no statutory power to make such regulation in the absence of a specific provision in the Act. Regulation 6 is made in far excess of the power conferred by the statute and therefore it is *ultra vires.* Reliance is placed on the decisions in **Sajjan Singh v. State of Punjab, P.K. Ramchandra Iyer v. Union of India, Education Sec. v Tameside B.C.** and **Richard Grayned v City of Rockford**. Lastly, the learned counsel would urge that regulation 6 is vague and any law, which is vague violates rule of natural justice and hence contravenes Article 14 of the Constitution of India. Reliance is placed on the decisions of **State of Bihar v. M/s. Karam Chand Thapar and Brothers Ltd., Board of High School and Intermediate Education, U.P. v. Chitra Srivastava and Det Norske Veritas v R.B.I., Bombay**.

Learned Standing Counsel for J.N.T.U., Sri Kodandaram, has taken this Court through the Act and regulations. He would submit that Section 4(1) and (2) read with 4(2)(i) gives power to the University to prescribe qualifications under which a person shall be admitted to the University or to any particular course. The power so conferred also includes the power to prescribe attendance regulations. He further submits that academic senate, one of the authorities of J.N.T.U. as per Section 10 of the Act has powers to prescribe academic regulations under para 7 of Part II of Schedule to the Act and therefore the impugned regulation cannot be invalidated on the ground of *ultra vires.* He would contend that students were made known about the attendance rules and they cannot now contend that it does not form part of the

conditions of the course. He would urge that the submission that Articles 14, 19 and 21 are violated cannot be countenanced for the reason that there is no compulsion for any of the petitioners to seek admission in B.Tech., course. When once such admission is sought, a student has to fulfil and satisfy all the conditions for getting eligibility to prosecute the course, to appear in the examinations and for conferring a Degree given by J.N.T.U. These regulations are reasonable and sustainable. Lastly, it is contended that "regular course" offered by various engineering colleges affiliated to J.N.T.U. requires attendance of the students as distinguished from "distance education programmes" offered by other Universities in non-engineering courses. B.Tech., course is one of the regular courses and therefore the regulations and conditions of distance education programme cannot be borrowed for the purpose of regular course. Learned counsel places reliance on the decisions in **Regional Engineering College, Hamirpur v Ashutosh Pandey, Akilesh Lumani v Principal, Sir C.R.Reddy Autonomous College, Eluru, K.Pradeep v J.N.T.U., Hyderabad and V. Prasanth Kumar v. J.N.T.U.**

Whether impugned regulation is *ultra vires*

When some one says a particular action is *ultra vires,* it only means that such action is "beyond the powers". This doctrine is important in relation to acts or contracts or public authorities, companies and delegated and sub-delegated legislative bodies, whose powers are limited by the statute. Acts, which are *ultra vires* the Constitution are void and incapable of enforcement and Rules/Regulations made by delegated rule-making agency which are contrary to Act under which power is devolved, would be '*ultra vires*' the Act and cannot be enforced. The authority may act *ultra vires,* if such authority acts in bad faith or makes regulations or rules for the purposes not authorised and such regulations made in exercise of delegated or devolved legislative power can be challenged on the ground that such regulations are "beyond its powers" and that such regulations are made for a purpose not authorised by the statute. Indeed, in the considered opinion of this Court, in view of settled principle of law that the power to make rules and regulations should be interpreted broadly having regard to the objects of the parent Act, the ultimate test would be whether the impugned regulations are intended to achieve a purpose not authorised by a statute. Therefore, it is always a question of interpretation of the statute or instrument, which confers the power of delegated or sub-delegated legislation to know whether regulations are *ultra vires*. J.N.T.U. Act is an Act to provide for establishment and incorporation of Technological University in the State of Andhra Pradesh. J.N.T.U. is established under Section 3 of the Act. Section 4 deals with objects, powers and functions of the University. Sub-sections (1) and (2) of Section 4 with the relevant clauses read as under.

> 4 (1) Subject to such law as may be made by Parliament as to co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions or subject to such directions as may, from time to time, be given in regard thereto by or on behalf of the Central Government, the objects of the University shall be-

i. Omitted

ii. Omitted

iii. to promote:-

a. thinking on new concepts, techniques, practices, in the relevant fields of knowledge and their application to indigenous conditions;

b. designing and Organisation of new courses of study and training, evaluation and examination system;

c. research relevant to the economic growth of the country;

d. entrepreneurship among the students of the constituent colleges; and

e. omitted

(2) The University shall have the following powers and functions, namely-

i. **to prescribe the qualifications under which persons shall be admitted to the University or to any particular course of study therein; and to prescribe the rules for the discipline of the students of the University;**

ii. omitted

iii. omitted

iv. to associate other institutions or branches or departments thereof and to recognise selected members of the staff thereof as teachers of the University and to admit the members thereof to any of the privileges of the University and to accept attendance of students at courses of study in such institutions or branches or departments thereof, in lieu of such part of attendance at courses of study in the University and upon such terms and conditions as may, from time to time, be determined by the University subject to the regulations prescribed.

v. **to hold examinations and to confer and grant degrees, diplomas, certificates and other academic distinctions on and to persons who shall have pursued a course of study and shall have passed the examinations or other tests conducted by the University.**

vi. to xix. are omitted

xx. **to do all such other acts and things as**

may be requisite in order to further the

objects of the University.

(emphasis supplied)

Section 10 enumerates as many as four University authorities, namely, the Executive Council, the Academic Senate, the Faculties and the Board of Studies. The executive council is entrusted with the powers as enumerated under Section 12 and 24(2) of the Act confers the power to make statutes in relation to the matters set out in Section 23 of the Act. Section 12(1)(xv) entrusts the powers to take all necessary steps to give effect to the provisions of the Act including the power to determine and regulate the policies relating to the affairs of the University. Under Section 23 of the Act, executive council can make regulations by way of Statutes for admission to the examinations for Degrees of the University and the fees to be charged for courses of study, research, practical training in the constituent colleges and to take all necessary steps for carrying out the purpose of the Act.

The Schedule to the Act enumerates the appointment and constitution of various officers and authorities of the University, the powers that can be exercised by them etc. Part II of the Schedule deals with academic senate. As per para 7, academic senate shall have powers of approving all courses of study as proposed by the Board of Studies, determining their curriculum and have general control of teaching, research and examinations within the University. Paragraph 7(d) of the Schedule further elaborates these general powers in the following terms.

> 7 (d). In particular and without prejudice to the generality of the foregoing power, the Academic Senate shall have powers-
>
> i. to advise the Council on all academic matters;
>
> ii. to make recommendations to the Council for the institution of professorship and other teaching posts and in regard to the duties, emoluments and qualifications thereof;
>
> iii. to make recommendation to the Council regarding institution of fellowships and scholarships;
>
> iv. to formulate, modify and revise schemes for the constitution or reconstitution of departments of teaching;
>
> v. to make regulations regarding admission of students to all the colleges and for the intake into each faculty;
>
> vi. **to make regulations prescribing equivalence of examinations, degrees, diplomas and certificates of other Universities colleges, institutions and boards;**
>
> vii. to make recommendations to the Council regarding the institution of Post-Graduate teaching and research;
>
> viii. to make recommendations to the Council regarding qualifications to be prescribed for teaching in the constituent colleges;
>
> ix. to recommend to the Council faculty development programmes

on the recommendation of the facility development committee or otherwise;

x. to formulate, modify and revise programmes of curriculum development on the recommendations of the curriculum development committee or otherwise;

xi. to make regulations regarding industrial training, where such training forms part of requirement for degree, diploma or certificate in consultation with the industrial liaison policy unit;

xii. to recommend to the Council measures for promoting collaboration between industries and colleges on the recommendations of the industrial liaison policy unit;

xiii. **to make regulations for the conduct of the examinations of the University and for the assessment, evaluation and grading of the students' performance at colleges.**

xiv. to consider the reports of the evaluation committee and to advise the Council on the follow up action to be taken in the implementation of the reports;

xv. to delegate to the Vice-Chancellor or to any of the committees of the Academic Senate, any of its powers;

xvi. to assess and make recommendations, laying down standards of accommodation, equipment, apparatus, library, maintenance and other physical facilities required for each faculty;

xvii. to exercise such other powers and perform such other functions as may be conferred or entrusted to it by or under the provisions of this Act, and

xviii. to deal with any other matter referred to it by the Vice-Chancellor or the Council.

(emphasis supplied)

The submission of the learned counsel for the petitioner is that under Section 4(2)(iv) of the Act, the power of the University or executive council or academic senate is limited to associate other institutions or branches or departments thereof and to recognise selected members of the staff thereof as teachers of the University and to accept the attendance of students at courses of study in such institutions and that the same does not specifically confer any power on the University to make attendance regulations. I am afraid this submission suffers from a fundamental fallacy and is liable to be rejected for two reasons. First, the purpose and object of the University is to offer courses or recognised institutions offering such courses and confer degrees subject to a student fulfilling all the regulations regarding curriculum, course and eligibility to appear in examinations conducted by the University. A University is a seat of learning of knowledge and since ages has enforced discipline as a part of study. Such discipline includes teacher – student relationship, which can be strengthened by regular interaction among them. A study of a course is not mere

reading textbooks prescribed but includes something more than mere reading books. It is essentially passing knowledge from one generation (teacher) to the other generation (student) keeping in view the larger interests of the community in which both live and thrive. This inter-generational osmosis of knowledge would be incomplete with regular and purposive interaction between teacher and taught.

Section 4(2)(xx) of the Act entrusts power of doing all other acts and things as may be requisite in order to further the objects of the University. Section 12(1)(xv) similarly entrusts the power to executive council to take all necessary steps to give effect to the provisions of the Act, including the policies relating to the affairs of the University and make Regulations as per Section 23 of the Act. Part-II paragraph 7 of the Schedule describes the powers of the academic senate and it is entrusted with the power to make Regulations for the conduct of examinations of the University and grading of the students performance at Colleges. When the University is entrusted with the duty to conduct examinations for the purpose of acquiring degrees and in that direction prescribes certain requirements like attendance, laboratory work, seminars etc., the same cannot be said to be *ultra vires* the Act. It is well settled that where specific power is conferred without prejudice to the generality of the general power, the particular power is only illustrative and does not in any way restrict the general power. A reference may be made to **Om Prakash v. Union of India**.

In **K.Ramanadhan v. State of Tamil Nadu** Government of Tamil Nadu in exercise of their powers under Section 3 of the Essential Commodities Act, 1955, promulgated Tamil Nadu Paddy (Restriction on Movement) Order, 1982 introducing a monopoly procurement scheme of paddy with a view to procure maximum stock of paddy by banning purchase by traders. This was challenged before Madras High Court in a batch of Writ Petitions *inter alia* on the ground that the impugned Control Order was in excess of powers conferred on the State Government under Section 3 of the Essential Commodities Act and that ban on the movement of paddy is unreasonable restriction violating Article 19(1)(g) of the Constitution of India. The High Court dismissed all the Writ Petitions and by Special Leave, the appeals were considered by the Supreme Court. It was mainly contended that the impugned Control Order is *ultra vires* the power of the State Government being in excess of the delegated powers. While dismissing the appeals, the Supreme Court held that the impugned Control Order was well within Section 3 of the Essential Commodities Act and that it is strictly in conformity with the delegation of powers to the State Government. The following observations are apt:

> Learned counsel for the appellant however strenuously contends that the delegation of powers by the Central Government under S. 5 of the Act must necessarily be in relation to 'such matters' and subject to 'such conditions' as may be specified in the notification. The whole attempt on the part of the learned counsel is to confine the scope and ambit of the impugned order to Cl. (d) of sub-s. (2) of S.3 of the Act which uses the word 'regulating' and take it out of the purview of sub-s. (1) of S. 3 which uses the words 'regulating or prohibiting'. That is not proper way of construction of sub-ss. (1) and (2) of S.3 of the Act in their normal setting. The restricted construction of S.3 contended for by learned counsel for the appellant would render the scheme of the Act wholly unworkable as already indicated, the source of power to make an order of this description is sub-s. (1) of S. 3 of

> the Act and sub-s. (2) merely provides illustration for the general powers conferred by sub-s.(1). Sub-s.(2) of S.3 of the Act commences with the words 'Without prejudice to the generality of the powers conferred by sub-s. (1)'. It is manifest that sub-s. (2) of S.3 of the Act confers no fresh powers but is merely illustrative of the general powers conferred by sub-s. (1) of S.3 without exhausting the subjects in relation to which such powers can be exercised.

The Supreme Court in the above case also observed that when a question of *ultra vires* is considered, the provision should be read so as to make the scheme of the Act workable and the broad power conferred on regulation/rule making authority cannot be ignored.

In **Ajay Canu v. Union of India** the order issued by the Commissioner of Police, Hyderabad, in exercise of powers under Section 21(1) of the Hyderabad City Police Act and Rule 498-A of A.P.Motor Vehicles Rules, 1964 making it compulsory for riders of motor cycles and scooters to wear protective helmet was challenged before the Andhra Pradesh High Court on the ground that same is *ultra vires* the Motor Vehicles Act, 1939 and violative of fundamental rights guaranteed under Article 19(1)(d) and Article 21 of the Constitution of India. This Court dismissed the Writ Petition upholding the validity of the notification. Before the Supreme Court it was urged that Rule 498-A of the A.P.Motor Vehicles Rules, which imposes such condition cannot come within the rule-making power of the State under Section 91(2)(i) of the Motor Vehicles Act. The Supreme Court applied the principle in **Omprakash v. Union of India** (supra) and repelled the contention observing thus:

> It is submitted by the learned Attorney General that even assuming that Rule 498-A does not come within the purview of Cl. (i) of sub-sec. (2) of S.91, still the State Government could frame such a rule under sub-sec. (1) of S.91. The learned Attorney General submits that the clauses under sub-se. (2) of S.91 are only illustrative and not exhaustive and the power is really under sub-section (1). In support of his contention, he has referred to a decision of this Court in Om Prakash v. Union of India, AIR 1971 SC 771 where it has been observed by this Court that it is a well-established proposition of law that where specific power is conferred without prejudice to the generality of the general power already specified, the particular power is only illustrative and does not in any way restrict the general power. In the instant case also, the general power is in sub-section (1) and sub-section (2) contains illustrations and does not, in any way, restrict the general power under sub-sec. (1). Thus, even assuming that Rule 498-A is not covered by Cl. (i) of sub-sec. (2), it is quite immaterial inasmuch as such a rule can be framed in exercise of the general power under sub-sec. (1) for the purpose of carrying into effect Chapter VI relating to control of traffic. There is, therefore, no substance in the contention of the petitioner that Rule 498-A is *ultra vires* the provisions of the Act.

Reading various provisions of the Act, especially, Sections 4, 12, 23, 24 and schedule to the Act, this Court holds that the submission of the learned counsel is without substance and the University was well within its powers to frame such

regulations including Regulation 6 prescribing minimum percentage of attendance to be eligible for appearing in the examinations after completion of the course. Therefore, it is not necessary to refer to various decisions cited by the learned counsel for the petitioners in support of the contention – and there cannot be any dispute - that when the regulation making power does not enable the authority to do something, such regulations would be beyond the powers conferred. The doctrine of *ultra vires,* be it noted – as mentioned earlier would not enable an authority on whom the power is devolved to make rules for the purposes not authorized by Act. That is not the case here as the university and the university authorities have ample power to prescribe course regulations, examinations and attendance regulations. Therefore, the submission of the learned counsel for the petitioners is rejected.

Whether the impugned regulation violates Fundamental Rights?

B. Tech (Regular) Four-Year Degree Course (Revised) Academic Regulations (hereafter called, the Regulations) came into effect from the academic year 2002-2003. All the petitioners are governed by these Regulations. As per Regulation Nos.1 and 2, a student of Four-year B.Tech., course has to fulfil all the academic requirements for the award of degree within eight academic years. A student will be declared eligible for award of B.Tech., degree if he has pursued a course of study for not less than four academic years and not more than eight academic years, and such student has registered for and studied all the subjects for a total of 212 credits and secure all the 212 credits. Regulation 3 describes courses of study that are offered for specialization for the B.Tech Degree, and Regulation 4 gives pattern of distribution of credits in theory and practicals, and Regulation 5 contains distribution and weightage of marks. As per this regulation the performance of a student in each semester/I year shall be evaluated subject-wise with a maximum of 100 marks in theory and 75 marks for practical subject. For theory subjects, the distribution shall be 20 marks for internal evaluation and 80 marks for the end-examinations. As per clause (iv) of Regulation 5, for practical subjects there shall be a continuous evaluation during the semester for 25 sessional marks, and 50 end-examination marks, and of the 25 marks for internal, **15 marks shall be awarded based on day-to-day work and 10 marks shall be awarded by conducting internal lab test(s)** (emphasis added). Besides this, every student has to submit project report, which is evaluated for 200 marks including 40 marks for internal evaluation, which will be conducted at the end of fourth year. Keeping this in view, Regulation 6, which is impugned will now be read:

6. Attendance:

i. A student has to put in a minimum of 75% of attendance in aggregate of all the subjects for acquiring credits in the I year and/or each semester thereafter.

ii. Condonation of shortage of attendance in aggregate upto 10% (65% and above and below 75%) in each semester or I year may be granted by the College Academic Committee.

iii. A student will not be promoted to the next semester unless he satisfies the attendance requirement of the present semester/ I year.

iv. Shortage of attendance below 65% in aggregate shall in no case be condoned.

v. Students whose shortage of attendance is not condoned in any semester/I year are not eligible to take their end examination of that class and their registration shall stand cancelled. They may seek re-admission for that semester/I year when offered next.

vi. Condonation of shortage of attendance as stipulated in 6(ii) above shall be granted on genuine and valid grounds with supporting evidence.

vii. A stipulated fee shall be payable towards condonation of shortage of attendance.

A brief reference to various course regulations would show that requirement of a student attending classes and marking his attendance is as much essential as appearing in the final examinations leading to award of B.Tech., Degree. In the scheme of distribution of weightage of marks and award of credits as per Regulations 4 and 5, the Regulations attach importance to students attending classes regularly because every examination in theory and practical also has 20 to 25 per cent of marks for internal assessment. This internal assessment cannot be effective if a student fails to attend classes because 15 internal assessment marks in practicals are based on day-to-day work in class-room or laboratory. The education is a regular process and the knowledge from the teacher to pupil in any branch of knowledge is continuous one, and not by testing a student for the purpose of internal assessment or examinations which will be conducted only after the end of period of course.

This Court is not able to apprehend as to how anybody can award internal assessment marks as prescribed in Regulation 5 without proper classroom interaction between the teacher and the taught. In **Akilesh Lumani v. Principal, Sir C.R.Reddy Autonomous College, Eluru** (supra), a Division Bench of this Court has considered the question as to whether a student of an autonomous college who failed to attend 75% of total lectures claim eligibility to appear at the final examination on the ground that the college has not stipulated such a requirement by framing a rule or regulation. The Court referred to University Grants Commission (the minimum standards of instructions for the grant of the first degree through formal education in the faculties of Arts, Humanities, Fine Arts, Music, Social Science, Commerce and Sciences) Regulations 1985 and held that under Section 14 of the University Grants Commission Act, 1956, the Regulations made by the University are binding on all the autonomous colleges, that the condition of attendance upto 75% is necessary for the purpose of eligibility for examinations. The Court then made the following observations.

> The aforesaid requirement prescribed by the Commission, in our considered view, is not only a salutary one, but also essential one. **It is well recognised, since ages, that a student can never get complete education by merely reading the text books sitting at home under a personal tutor. For the all-round development of one's personality it is essential that one should attend an educational institution, call it by any name Gurukulam, Madarsa, or College, along with other students who come from various cross sections of the society**. This was the reason that why the great Kings and Emperors of this country always sent their sons to the Gurukulas headed by famous Masters, who were residing mostly in the deep forests. The Princes were made to sit along with the other common students, work along with them and serve the Master like the other commoners. Even Lord Krishna, who was the depository of all knowledge, had to attend the Gurukulam headed by that Great Teacher Sandipani along with others including the poor 'Kuchela'. **It is also well recognized that learning by attending the college, unlike learning from books, will broaden the vision of the students and develop a sort of camaraderie amongst them, which is very essential for understanding the intricate problems of the country and for its good governance. That apart, the job of a lecturer is not only teaching the subject but also to help the student in the full development of his personality. This will only be possible if a student attends the lectures regularly, enabling the teacher to constantly watch his performance and guide him in the right direction. Thus, attending the College or an educational institution, regularly, is an essential element of education, which will be lost if a student fails to attend a minimum number of lectures.**
>
> (emphasis supplied)

The decision of the Division Bench was followed subsequently by another Division Bench in **K.Pradeep v. J.N.T.U., Hyderabad** (supra) wherein it was held that in view of statutory prescription of 65% of attendance for seeking condonation of shortage of attendance, the Court cannot direct the University to condone the shortage of attendance. I n **V. Prashanth Kumar v. J.N.T.U** (supra) this Court followed the two Division Bench judgments and rejected the contention that a student who has less than 65% of attendance should be permitted for appearing in the examinations. This Court, therefore, has consistently taken a view that prescribing minimum attendance for students for prosecuting studies has a salutary effect and essential. While considering the submission that the prescription of minimum percentage of attendance is violative of fundamental right under Articles 19 and 21 of the Constitution of India, the decisions of this Court cannot be ignored. The submission that the petitioners' fundamental rights are violated by the regulation and it is unreasonable restriction cannot be accepted.

In **State of A.P. v. L.Narendra Nath**, the Supreme Court considered the question whether the entrance test prescribed by the Government of Andhra Pradesh for selection of candidates in the medical colleges run by the State in Andhra Pradesh is justified in law. It was *inter alia* contended that prescription of entrance test for admission to medical college affects the personal liberty of the candidates secured under Article 21 of the Constitution of India. In support of the said contention reliance

was placed on **Spottswood v. Sharpe**. The Constitution Bench of the Supreme Court repelled the contention holding as under.

> Lastly it was urged that such test affected the personal liberty of the candidates secured under Article 21 of the Constitution. We fail to see how refusal of an application to enter a medical college can be said to affect one's personal liberty guaranteed under that Article. Everybody, subject to the eligibility prescribed by the University, was at liberty to apply for admission to the Medical College. The number of seats being limited compared to the number of applicants every candidate could not expect to be admitted. Once it is held that the test is not invalid the deprivation of personal liberty, if any, in the matter of admission to a medical College was according to procedure established by law. Our attention was drawn to the case of *Spootswodd v. Sharpe* (1953 98 L.Ed. 884 in which it was held that due process clause of the Fifth Amendment of the American Constitution prohibited racial segregation in the District of Columbia. Incidentally the Court made a remark at (p.887):
>
> > "Although the Court has not assumed the define 'liberty' with any great precision, that term is not confined to mere freedom from bodily restraint. Liberty under law extends to the full range of conduct which the individual is free to pursue, and it cannot be restricted except for a proper governmental objective. Segregation in public education is not reasonably related to any proper governmental objection, and thus it imposes on Negro children of the District of Columbia a burden that constitutes an arbitrary deprivation of their liberty in violation of the Due Process Clause"
>
> The problem before us is altogether different. In this case everybody subject to the minimum qualification prescribed was at liberty to apply for admission. The Government objective in selecting a number of them was certainly not improper in the circumstances of the case.

In **Unni Krishnan, J.P. v. State of A.P.** a Constitution Bench of the Supreme Court considered the question whether the Constitution of India guarantees fundamental right to education to all its citizens. The Court noticed that by reason of catena of the decisions of the Supreme Court right to go abroad, right to privacy, right against solitary confinement, right against Bar fetters, right to legal aid, right to speedy trial, right against Handcuffing, right against delayed execution of death sentence, right against custodial violence, right against public hanging, right to Doctor's assistance and right to shelter are recognised as included in the right to life and liberty (See paragraph 31 of the judgment of Mohan, J). The Court, however, reversed the earlier judgment in **Mohini Jain v. State of Karnataka** which held that a citizen has fundamental right to education for medical, engineering or other professional degree courses. Justice B.P.Jeevan Reddy, with whom Chief Justice Sharma, Bharucha, Mohan, JJ, agreed, laid down (in paragraph 145 of the judgment), as under:

> …The right to education which is implicit in the right to life and personal liberty guaranteed by Article 21 must be construed in the light of the directive principles in Part IV of the Constitution. …The three Articles 45, 46 and 41

> are designed to achieve the said goal among others. It is in the light of these articles that the content and parameters of the right to education have to be determined. Right to education, understood in the context of Articles 45 and 41, means: (a) every child citizen of this country has a right to free education until he completes the age of fourteen years, and (b) after a child/citizen completes 14 years, his right to education is circumscribed by the limits of the economic capacity of the State and its development.

Yet again it was held (in paragraphs 148 and 149):

> The right to education further means that a citizen has a right to call upon the State to provide educational facilities to him within the limits of its economic capacity and development. By saying so, we are not transferring Article 41 from Part IV to Part III, we are merely relying upon Article 41 to illustrate the content of the right to education flowing from Article 21. We cannot believe that any State would say that it need not provide education to its people even within the limits of its economic capacity and development. It goes without saying that the limits of economic capacity are, ordinarily speaking, matters within the subjective satisfaction of the State.
>
> **In the light of the above enunciation, the apprehension expressed by the counsel for the petitioners that by reading the right to education into Article 21, this Court would be enabling each and every citizen of this country to approach the courts to compel the State to provide him such education as he chooses must be held to be unfounded. The right to free education is available only to children until they complete the age of 14 years. Thereafter, the obligation of the State to provide education is subject to the limits of its economic capacity and development.**
>
> (emphasis supplied)

The decision of the Supreme Court in **Unni Krishnan, J.P. v. State of A.P** (supra), especially the scheme framed by the Court was re-considered by nine-Judge Bench of the Supreme Court in **T.M.A.PAI Foundation v. State of Karnataka.** Though scheme framed in **Unni Krishnan case** (supra) was held to be unconstitutional, it was unanimously held that the view in **Unni Krishnan case** (supra) regarding fundamental right to education of a child below fourteen years was upheld. In the majority judgment, Chief Justice Kirpal held:

> …The fundamental right to establish an educational institution cannot be confused with the right to ask for recognition or affiliation. The exercise of a fundamental right may be controlled in a variety of ways. For example, the right to carry on a business does not entail the right to carry on a business at a particular place. The right to carry on a business may be subject to licensing laws so that a denial of the licence prevents a person from carrying on that particular business. The question of whether there is a fundamental right or not cannot be dependent upon whether it can be made the subject-matter of controls….The establishment and running of an educational institution where a large number of persons are employed as teachers or administrative staff, and an activity is carried on that results in the imparting of knowledge to the students, must necessarily be regarded as an occupation, even if there is no element of profit generation. It is difficult to

comprehend that education, per se, will not fall under any of the four expressions in Article 19(1)(g). "Occupation" would be an activity of a person undertaken as a means of livelihood or a mission in life. The above quoted observations in *Sodan Singh v. New Delhi Municipal Committee* correctly interpret the expression "occupation" in Article 19(1)(g).

54.The right to establish an educational institution can be regulated; but such regulatory measures must, in general, be to ensure the maintenance of proper academic standards, atmosphere and infrastructure (including qualified staff) and the prevention of maladministration by those in charge of management. The fixing of a rigid fee structure, dictating the formation and composition of a governing body, compulsory nomination of teachers and staff for appointment or nominating students for admissions would be unacceptable restrictions.

58. For admission into any professional institution, merit must play an important role. While it may not be normally possible to judge the merit of the applicant who seeks admission into a school, while seeking admission to a professional institution and to become a competent professional, it is necessary that meritorious candidates are not unfairly treated or put at a disadvantage by preferences shown to less meritorious but more influential applicants. Excellence in professional education would require that greater emphasis be laid on the merit of a student seeking admission. **Appropriate regulations for this purpose may be made keeping in view the other observations made in this judgment in the context of admissions to unaided institutions.**

59. Merit is usually determined, for admission to professional and higher education colleges, by either the marks that the student obtains at the qualifying examination or school-leaving certificate stage followed by the interview, or by a common entrance test conducted by the institution, or in the case of professional colleges, by government agencies.

(emphasis supplied)

Having regard to the decisions noticed hereinabove, this Court is of considered opinion that it is always permissible for the competent authority to prescribe attendance regulation and the same is always treated as for public good. It cannot even be branded as un-reasonable restriction. It must be remembered that while the Court considers whether the restrictions imposed by the State are reasonable or unreasonable, the individual hardship caused to a person or class of persons is of no consequence. Whether the restrictions are reasonable or not depends on the purpose which the Statute seeks to achieve and the mischief that is sought to be prevented by the Statute. A reference may be made to **Vrajilal and Company v. State of M.P.** wherein a Constitution Bench of the Supreme Court ruled that while testing reasonableness on restrictions impinging on fundamental freedom, the Court has to keep in mind two rules of construction in mind. First, the Courts generally lean towards the Constitutionality of a legislative measure impugned before them upon the presumption that a Legislature would not deliberately flout a constitutional safeguard or right. Secondly, while construing such an enactment the Court must examine the object and purpose of the Act, the mischief it seeks to prevent and

ascertain from such factors its true scope and meaning.

It is well-settled that burden lies on the State to prove that the restrictions imposed under Article 19(6) are reasonable and are made keeping in view public interest and public good. Insofar as the test of reasonableness is concerned, in **State of Madras v. V.G.Row** the Supreme Court laid down as under.

> It is important in this context to determine that the test of reasonableness wherever prescribed should be applied to each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the times, should all enter into the judicial verdict.

In **M.R.F. Limited v. Inspector of Kerala** the Supreme Court after referring to relevant case law laid down the following principles for testing the reasonableness of restrictions.

> (1) While considering the reasonableness of the restrictions, the Court has to keep in mind the Directive Principles of State Policy.
>
> (2) Restrictions must not be arbitrary or of an excessive nature so as to go beyond the requirement of the interest of the general public.
>
> (3) In order to judge the reasonableness of the restrictions, no abstract or general pattern or a fixed principle can be laid down so as to be of universal application and the same will vary from case to case as also with regard to changing conditions, values of human life, social philosophy of the Constitution, prevailing conditions and the surrounding circumstances.
>
> (4) A just balance has to be struck between the restrictions imposed and the social control envisaged by clause (6) of Article 19.
>
> (5) Prevailing social values as also social needs which are intended to be satisfied by restrictions have to be borne in mind (See **State of U.P. v. Kaushaliya).**
>
> (6) There must be a direct and proximate nexus or a reasonable connection between the restrictions imposed and the object sought to be achieved. If there is a direct nexus between the restrictions and the object of the Act, then a strong presumption in favour of the constitutionality of the Act will naturally arise (See **Kavalappara Kottarathil Kochuni v. States of Madras and Kerala** and **O.K. Ghosh v. E.X.Joseph)**.

Further, Regulation 6 is intended to achieve public good and in such an event any submission that it is violative of Articles 19 and 21 of the Constitution of India is misconceived. There cannot be any fundamental right against Regulation which is aimed at achieving public good [See para 13 of **Ajay Canu v. Union of India**

(supra)].

Whether the impugned Regulation is invalid being vague and violative of principles of natural justice?

Regulation 6 is attacked on the ground that it is vague and therefore unsustainable on the principle of equality before law. I am afraid, this submission is without any substance. Regulation 6 prescribes that a student has to put in minimum 75% of attendance in aggregate of all the subjects for acquiring credits in the first year and/or each semester thereafter. It only means that if ten subjects form part of the course of the first year or in any semester thereafter, a student has to put in minimum of 75% in each subject, and also in aggregate of all subjects. A student who has required attendance in all the subjects except two or three cannot be permitted to appear in the examinations. Regulation 6(ii) read with Regulation 6(iii) confers the power on the College Academic Committee to condone the shortage of attendance in aggregate upto 10%. Similar regulation was interpreted by the Supreme Court in **Regional Engineering College, Hamirpur v. Ashutosh Pandey** (supra). The following passage from the said judgment is relevant.

> A perusal of the Regulation shows that a candidate should first have 75% of minimum attendance in that course under Regulation 4.1. Regulation 4.2 mentions the circumstances under which further exemption can be granted by the Principal. The Principal can give further credit up to an extent of 10% of the total classes held in each course during the period of a student's participation in the programmes/competitions mentioned in Regulation 4.2. The Principal can exempt up to 10% of the total classes only in contingencies as mentioned in Regulation 4.2. Thus, 10% is the maximum in addition to 25%.
>
> In addition, Regulation 4.3 is specific that the condonation on account of reasons listed under Regulation 4.2 shall not exceed 10% of the total lectures delivered during the semester. It also states that a candidate will have to apply to the Head of the Department concerned on a prescribed pro forma along with the reasons and documents in proof of his absence. Condonation can be granted by the Head of the Department concerned with the prior approval of the Principal. Thus, 10% in excess of 25% alone is the maximum that can be condoned.

The Regulation further provides that "a student will not be permitted to the next semester unless he satisfies the attendance requirement and that such students are not eligible to take their end-examination of the classes and their registers are stand cancelled". The Regulation is very clear and couched in simple understandable language. It leaves no doubt. In the considered opinion of this Court, having regard to unavoidable imperfection in the drafting of legislation or rules, the Courts should examine the complaint of vagueness keeping in view the person of average intellect. The Regulations are intended for students of B.Tech., course and everybody can understand the Regulation and nobody need to consult other

persons for understanding the same. The submission is therefore rejected and this Court holds that the Regulation does not permit two interpretations or two methods of understanding the same. There is no vagueness in the Regulation.

The submission that it is violative of principles of natural justice is to be noticed only for the purpose of rejection. I fail to understand as to how the impugned Regulation violates the principles of natural justice. Even before a student joins B.Tech., course, the respondents make known all the regulations. A student joining particular course is deemed to be aware of all the course regulations which he/she is pursuing. Indeed, in the counter affidavit filed by the College it is clearly stated that all the Regulations are made known and the attendance details of every student are sent to the parents every month. This would indicate that all the students who fall shortage of attendance have been informed about their attendance. The submission is therefore rejected.

As per B.Tech., Regulations a student has to complete four-year course fulfilling all the conditions, including the conditions contained in Regulations 4, 5 and 6. These cannot be read in isolation and one has to read them together to understand the purpose of prescribing 75% of attendance as minimum requirement. If the authorities entrusted with the academic administration after deep consideration come to the conclusion that a student cannot get academic maturity and readiness to appear for final examinations without attending the theory and practical classes for a minimum prescribed period, such decisions ordinarily cannot be interfered with by Court of judicial review, because, such issues are not justiciable.

In support of the above proposition a reference may be made to **University of Mysore v. Govinda Rao**, **Maharashtra S.B.O.S. & H.S. Education v. Paritosh, J.P. Kulshreshta v. Allahabad University, State of U.P. v. D.K. Singh,** and **Dr.Malleswara Rao v. University of Health Sciences.**

In **University of Mysore v. Govinda Rao** (supra), the Supreme Court held that in the field of education it is safe for the Court to leave the decisions of academic matters to experts who are more familiar with the problems they face than the Courts. The relevant observations of the apex Court read as under.

> **Boards of appointments are nominated by the Universities and when recommendation made by them and the appointments following on them are challenged before Courts, normally the courts should be slow to interfere with the opinions of experts. There is no allegation about malafides against the experts who constituted the present Board; and so, we think,** it would normally be wise and safe for the Courts to leave the decisions of academic matters to experts who are familiar with the problems they face than the Courts generally can be.
>
> (emphasis supplied)

In **Maharashtra S.B.O.S. & H.S. Education v. Paritosh** (supra), the validity of Regulation 104(3) of the Maharashtra Secondary Education Board Regulations, 1977 fell for consideration. The said Regulation provided that no revaluation of the answer book/supplements shall be done and that only verification is allowed. The said Regulation was struck down by the Bombay High Court as being unreasonable

a n d *ultra vires*. The Supreme Court while accepting the appeal from the Maharashtra Board of Secondary Education upheld the Regulation inter alia on the ground that the wisdom or otherwise of not providing for revaluation of answer script is ordinarily beyond the scope of judicial review. The Supreme Court held as under.

…. As has been repeatedly pointed out by this Court, the **Court should be extremely reluctant to substitute its own views as to what is wise, prudent and proper in relation to academic matters in preference to those formulated by professional men possessing technical expertise and rich experience of actual day-to-day working of educational institutions and the departments controlling them.** It will be wholly wrong for the Court to make a pedantic and purely idealistic approach to the problems of this nature, isolated from the actual realities and grass root problems involved in the working of the system and unmindful of the consequences which would emanate if a purely idealistic view is opposed to a pragmatic one were to be propounded….

(emphasis supplied)

In **J.P. Kulshreshta v. Allahabad University** (supra), while reiterating the above view ruled thus.

> Rulings of this Court were cited before us to hammer home the point that the court should not substitute its Judgment for that of academicians when the dispute relates to educational affairs. **While there is no absolute ban, it is a rule of prudence that courts should hesitate to dislodge decisions of academic bodies.** But University organs, for that matter any authority in our system, is bound by the rule of law and cannot be a law unto itself. If the Chancellor or any other authority lesser in level decides an academic matter or an educational question, the Court keeps its hands off; but where a provision of law has to be read and understood, it is not fair to keep the Court out.
>
> (emphasis supplied)

In **State of U.P. v. D.K. Singh** (supra), M.B.B.S. students of Motilal Nehru Medical College filed a writ petition before the Allahabad High Court for a direction to the authorities to advance the final year MBBS Examinations to July 1986 instead of scheduled date in January 1987. The grievance projected before the Court was that if the examinations were conducted in January 1987, the students would be unable to apply for admission to the post-graduate course, which commences in March 1986. The High Court allowed the writ petition holding that it was unreasonable for the authorities to compel the students to wait for six months. The Supreme Court while reversing the judgment of the Allahabad High Court held.

…we think that the High Court was not justified in interfering in a matter of such an academic nature as this. The question whether a course of study should commence in January or July of the year in a post-graduate medical institution is dependant on number of factors like availability of seats, availability of beds in the hospital, availability of teachers, laboratories and equipment and perhaps a host of other factors with which we are not familiar. **Ordinarily, it should, therefore be a matter best leave to the University…. When an academic year should commence and when it should end is eminently a matter for the education authorities and not for the Court. One cannot dislocate the time schedule of the University merely for the convenience of a few students.**

(emphasis supplied)

A reference may also be made to **Maharshi Dayanand University v. Dr. Anto Joseph** wherein the Supreme Court while dealing with case of shortage of attendance of an M.B.B.S. student indicated that ordinarily the Court cannot interfere with such matters. Similarly in **Regional Engineering College, Hamirpur v. Ashutosh Pandey** (supra) the Supreme Court dealing with the case of condonation of delay under relevant academic regulations of the college, held that the Principal of the College is empowered to condone shortage of attendance only to the extent of 10% and the rules do not permit such relaxation if the absence is in excess of 10%.

The submission of the learned counsel for the petitioners that due to arbitrary action of the College with regard to dress code, with regard to attendance in seminars etc., students could not fulfil attendance criteria cannot be countenanced. When the College did not mark attendance, as alleged, nothing prevented petitioners to approach appropriate authorities and for the first time such a ground is taken in this Court. Further, these allegations are denied by second respondent college and therefore nothing much turns on this submission. In any view of the matter, this Court does not find any arbitrariness in prescribing 75% of attendance to make students eligible to appear for final examinations for various reasons mentioned hereinabove. Equally, this Court is not impressed with the submission of learned counsel for the petitioners that in universities and educational institutions in United Kingdom compulsory attendance is dispensed with for the good of education. Any education system cannot be evaluated in a social vacuum, social mores, cultural ethos and history of the nation impliedly or expressly form part of the education system and as observed by this Court in **Akilesh Lumani v. Principal, Sir C.R.Reddy Autonomous College, Eluru** (supra) teacher-student relation is an important social relationship which everyone has to respect in the background of Indian culture.

The Writ Petitions are devoid of merit and are accordingly dismissed, without any order as to costs.

_____

(V.V.S.RAO, J)

.11.2004.

pln/bnr

NOTE: LR COPY BE MARKED.

(B.O)

pln/bnr

To

(One fair copy to the Hon'ble Sri Justice V.V.S.RAO, for his Lordship's kind perusal)

1. The Vice Chancellor, Jawaharlal Nehru Technological University,

Kukatpally, Hyderabad.

2. The Under Secretary, Union of India, Ministry of Law, Justice and

Company Affairs, New Delhi.

6 The Secretary, A.P.Advocates Association Library, High Court

Buildings, Hyderabad.

7 8 LR Copies.

8 2 CD copies.

9 The Secretary, Aurora's Engineering College, Bhongir, Nalgonda

District.